

*SC NAACP v. Alexander,*  
D.S.C. Case No. 3:21-cv-03302-MGL-TJH-RMG

# EXHIBIT 4

1  
2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

-----x

4 THE SOUTH CAROLINA STATE  
5 CONFERENCE OF THE NAACP

6 and

7 TAIWAN SCOTT, ON BEHALF OF HIMSELF  
8 AND ALL OTHER SIMILARLY SITUATED  
PERSONS,

Case No.  
3:21-CV-03302  
JMC-TJH-RMG

9 Plaintiffs,

10 Vs.

11 THOMAS C. ALEXANDER, IN HIS OFFICIAL  
12 CAPACITY AS PRESIDENT OF THE SENATE;  
13 LUKE A. RANKIN, IN HIS OFFICIAL CAPACITY  
14 AS CHAIRMAN OF THE SENATE JUDICIARY  
15 COMMITTEE; MURRELL SMITH, IN HIS OFFICIAL  
16 CAPACITY AS SPEAKER OF THE HOUSE OF  
17 REPRESENTATIVES; CHRIS MURPHY, IN HIS  
18 OFFICIAL CAPACITY AS CHAIRMAN OF THE  
19 HOUSE OF REPRESENTATIVES JUDICIARY  
20 COMMITTEE; WALLACE H. JORDAN, IN HIS  
21 OFFICIAL CAPACITY AS CHAIRMAN OF THE HOUSE  
OF REPRESENTATIVES ELECTIONS LAW  
SUBCOMMITTEE; HOWARD KNAPP, IN HIS  
OFFICIAL CAPACITY AS INTERIM EXECUTIVE  
DIRECTOR OF THE SOUTH CAROLINA STATE  
ELECTION COMMISSION; JOHN WELLS, JOANNE  
DAY, CLIFFORD J. EDLER, LINDA MCCALL,  
AND SCOTT MOSELEY, IN THEIR OFFICIAL  
CAPACITIES AS MEMBERS OF THE SOUTH  
CAROLINA STATE ELECTION COMMISSION,

Defendants.

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22  
23 STENOGRAPHIC REMOTE VIRTUAL DEPOSITION  
CHARLES TERRENI  
24 Tuesday, August 16, 2022  
25

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| <p style="text-align: right;">Page 18</p> <p>1           TERRENI</p> <p>2       A. It was a lawsuit brought</p> <p>3       under the South Carolina, I believe</p> <p>4       it's called the State Accommodations</p> <p>5       Act against a restaurant that</p> <p>6       discriminated against my clients for</p> <p>7       refusing them service.</p> <p>8       Q. What about a Voting Rights</p> <p>9       Act claim, have you ever brought or</p> <p>10      defended against one of those?</p> <p>11      A. Yes, ma'am.</p> <p>12      Q. In what context?</p> <p>13      A. Well, there have been a</p> <p>14      few. Would you like me to try to go</p> <p>15      through them or...</p> <p>16      Q. Yes, please, briefly. What</p> <p>17      body was at issue?</p> <p>18      A. They were primarily Section</p> <p>19      5 claims. I litigated a Section 5</p> <p>20      claim on behalf of the Richland</p> <p>21      County Republican Party in the '90s</p> <p>22      involving the need to preclear</p> <p>23      changes in a redistricting plan. I</p> <p>24      was the plaintiff.</p> <p>25      I defended the State</p> | <p style="text-align: right;">Page 20</p> <p>1           TERRENI</p> <p>2       should not be diminished in a</p> <p>3       redistricting plan absent</p> <p>4       unavoidable circumstances such as</p> <p>5       inward migration or something of</p> <p>6       that sort.</p> <p>7       There was an intent component</p> <p>8       in Section 5 as I recall. And then</p> <p>9       as a practical matter it required</p> <p>10      either getting preclearance from the</p> <p>11      Justice Department and persuading</p> <p>12      them that a plan was</p> <p>13      nonretrogressive or retrogressive</p> <p>14      depending on what side I was on.</p> <p>15      And also -- or in the alternative</p> <p>16      obtaining a declaratory judgment</p> <p>17      from the D.C. Circuit.</p> <p>18      Q. Under Section 5 could a</p> <p>19      jurisdiction go from having three</p> <p>20      majority-minority districts to two,</p> <p>21      for example?</p> <p>22      A. It could.</p> <p>23      Q. It could under what</p> <p>24      circumstances?</p> <p>25      A. A plethora of</p>                            |
| <p style="text-align: right;">Page 19</p> <p>1           TERRENI</p> <p>2       Republican Party in an action that</p> <p>3       was brought trying to compel</p> <p>4       preclearance of the state</p> <p>5       presidential primary in 2000, which</p> <p>6       was a volunteer primary.</p> <p>7       I brought a Section 5 claim I</p> <p>8       believe against Allendale County</p> <p>9       several years ago involving</p> <p>10      Allendale, one of the Allendale</p> <p>11      County local governments and that</p> <p>12      was also a preclearance issue and an</p> <p>13      equal protection issue.</p> <p>14      That's what I remember off the</p> <p>15      top of my head.</p> <p>16      Q. You mentioned Section 5.</p> <p>17      What is your understanding of what</p> <p>18      Section 5 required?</p> <p>19      A. Retrogression.</p> <p>20      Q. What does retrogression</p> <p>21      mean to you?</p> <p>22      A. Well, what retrogression</p> <p>23      meant to me was -- well, it was</p> <p>24      twofold. It was one that the</p> <p>25      existing rights of minority voters</p>             | <p style="text-align: right;">Page 21</p> <p>1           TERRENI</p> <p>2       circumstances, but one would be that</p> <p>3       the population wouldn't be there to</p> <p>4       support three minority districts</p> <p>5       anymore.</p> <p>6       Q. Did it require looking at</p> <p>7       voting patterns to see whether or</p> <p>8       not there was racial bloc voting in</p> <p>9       a jurisdiction?</p> <p>10      A. It could.</p> <p>11      Q. Are you familiar with</p> <p>12      racial bloc voting?</p> <p>13      A. To some extent, yes.</p> <p>14      Q. What do you understand it</p> <p>15      to mean?</p> <p>16      A. I mean racial bloc voting</p> <p>17      if you are referring to the Gingles</p> <p>18      preconditions it would entail a</p> <p>19      situation in which the minority</p> <p>20      community is sufficiently compact to</p> <p>21      form the majority district, that the</p> <p>22      minority community is politically</p> <p>23      cohesive and tends to attempt to</p> <p>24      vote candidates of its choice. Then</p> <p>25      if you have racially polarized</p> |

6 (Pages 18 - 21)

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| <p style="text-align: right;">Page 22</p> <p>1           TERRENI</p> <p>2   voting, you would have the majority</p> <p>3   community consistently frustrating</p> <p>4   the efforts of the minority</p> <p>5   committee to elect candidates of its</p> <p>6   choice.</p> <p>7   Q. While you were defending or</p> <p>8   while you were working on Section 5</p> <p>9   actions was it also possible for --</p> <p>10   are you aware whether it was</p> <p>11   possible for a jurisdiction to</p> <p>12   receive preclearance under Section 5</p> <p>13   and still face a lawsuit on the</p> <p>14   other side of that preclearance</p> <p>15   under some other constitutional or</p> <p>16   statutory framework?</p> <p>17   A. I'm aware that it was.</p> <p>18   Q. Are you aware that the</p> <p>19   constitutional and statutory</p> <p>20   framework still exists today that</p> <p>21   existed when Section 5 was in</p> <p>22   operation?</p> <p>23   A. I'm aware that -- yes.</p> <p>24   Generally speaking. I mean I</p> <p>25   haven't wanted to do a history</p>           | <p style="text-align: right;">Page 24</p> <p>1           TERRENI</p> <p>2   know, I don't know the particulars</p> <p>3   of it, but to force coverage of</p> <p>4   Section 5 for a particular</p> <p>5   jurisdiction.</p> <p>6   Q. Have you ever brought or</p> <p>7   defended against a Section 2 action</p> <p>8   under the Voting Rights Act?</p> <p>9   A. Bear with me, I haven't</p> <p>10   practiced law in a while.</p> <p>11   I have never brought a Section</p> <p>12   2 action. It is possible that</p> <p>13   Section 2 was raised as a cause of</p> <p>14   action in some of the litigation in</p> <p>15   which I have been involved.</p> <p>16   Q. Have you ever represented a</p> <p>17   minority individual plaintiff or a</p> <p>18   group that served minority voters in</p> <p>19   a Section 5 or other voting type</p> <p>20   challenge or case?</p> <p>21   A. That's a broad statement.</p> <p>22   I mean if you are talking about a</p> <p>23   named plaintiff, to the best of my</p> <p>24   recollection, no. There would have</p> <p>25   been -- there may have been minority</p> |
| <p style="text-align: right;">Page 23</p> <p>1           TERRENI</p> <p>2   lesson here because I'm not capable</p> <p>3   of it, but I'm generally aware that</p> <p>4   you can still sue someone over a</p> <p>5   redistricting plan under Section 2</p> <p>6   or the 14th Amendment or whatever</p> <p>7   causes of action existed before</p> <p>8   Section 5 no longer was in effect.</p> <p>9   Q. No longer is in?</p> <p>10   A. Effect.</p> <p>11   Q. Section 5 is still</p> <p>12   constitutional, it just doesn't</p> <p>13   function anymore, is that your</p> <p>14   understanding?</p> <p>15   A. My understanding is until</p> <p>16   such time as Congress were to update</p> <p>17   the coverage formula Section 5</p> <p>18   cannot be implemented.</p> <p>19   Q. Do you know anything about</p> <p>20   the bail-in requirement under</p> <p>21   Section 3C under the Voting Rights</p> <p>22   Act? Are you familiar with that?</p> <p>23   A. I'm generally aware that</p> <p>24   plaintiffs can sue a jurisdiction</p> <p>25   for discriminatory practices. You</p> | <p style="text-align: right;">Page 25</p> <p>1           TERRENI</p> <p>2   members involved in the entities</p> <p>3   that I represented.</p> <p>4   Q. Have you ever represented</p> <p>5   -- you mentioned having represented</p> <p>6   Republican organizations in some</p> <p>7   Section 5 proceedings. Have you</p> <p>8   ever represented a</p> <p>9   Democratic-affiliated organization</p> <p>10   in a Section 5 proceeding?</p> <p>11   A. No.</p> <p>12   Q. Would you consider the</p> <p>13   Voting Rights Act a race-conscious</p> <p>14   statute?</p> <p>15   A. I don't understand the</p> <p>16   question.</p> <p>17   Q. Would you consider the</p> <p>18   Voting Rights Act to be a statute</p> <p>19   that requires awareness of race?</p> <p>20   A. Not universally. I mean it</p> <p>21   is certainly a statute that is</p> <p>22   designed to protect the rights of</p> <p>23   racial minorities under certain</p> <p>24   circumstances but it doesn't mean</p> <p>25   that you need universal awareness of</p>  |

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| <p style="text-align: right;">Page 186</p> <p>1                   TERRENI</p> <p>2   just fiduciary, is that your</p> <p>3   understanding?</p> <p>4       A. Yes.</p> <p>5       Q. Under Roman numeral I-B</p> <p>6   still in the federal law section</p> <p>7   it's titled Voting Rights. Could</p> <p>8   you take a moment to read that</p> <p>9   sentence.</p> <p>10    A. "A redistricting plan for</p> <p>11   the general assembly or Congress</p> <p>12   must not have either the purpose or</p> <p>13   the effect of diluting minority</p> <p>14   voting strength and must otherwise</p> <p>15   comply with Section 2 of the Voting</p> <p>16   Rights Act, as expressed in</p> <p>17   Thornburg versus Gingles and its</p> <p>18   progeny, and the 14th and 15th</p> <p>19   amendments to the U.S.</p> <p>20   Constitution."</p> <p>21    Q. What did understand the</p> <p>22   diluting a minority voting strength</p> <p>23   mean?</p> <p>24    A. Generally speaking it means</p> <p>25   the diluting of -- the effective</p>   | <p style="text-align: right;">Page 188</p> <p>1                   TERRENI</p> <p>2       Q. Could it include the</p> <p>3   packing of black voters?</p> <p>4       A. It could as the term is</p> <p>5   used in the case law.</p> <p>6       Q. Could it include both the</p> <p>7   packing and cracking of black</p> <p>8   voters?</p> <p>9       A. Yes.</p> <p>10    Q. I believe you mentioned the</p> <p>11   three Gingles preconditions. Are</p> <p>12   the three Gingles preconditions that</p> <p>13   you mentioned what you would</p> <p>14   consider to be the test for whether</p> <p>15   there's dilution of minority voting</p> <p>16   strength?</p> <p>17    A. It would be one test.</p> <p>18    Q. What is the other or what</p> <p>19   is another?</p> <p>20    A. Well, racial gerrymandering</p> <p>21   could, I don't suppose it</p> <p>22   necessarily has to, but could result</p> <p>23   in the dilution of minority voting</p> <p>24   strength. It could result in the</p> <p>25   enhancement of the minority voting</p>  |
| <p style="text-align: right;">Page 187</p> <p>1                   TERRENI</p> <p>2   reduction of a minority community's</p> <p>3   ability to exercise its electoral</p> <p>4   franchise either through Section 2</p> <p>5   by electing a representative of its</p> <p>6   choice or through the ability to</p> <p>7   elect or an opportunity to elect a</p> <p>8   representative of its choice</p> <p>9   regarding the three Thornburg versus</p> <p>10   Gingles preconditions are met and,</p> <p>11   three, the avoidance of intentional</p> <p>12   or predominantly race based</p> <p>13   redistricting under the 14th</p> <p>14   amendment as shown in subsequent</p> <p>15   case law.</p> <p>16    Q. In South Carolina would</p> <p>17   minorities include black voters?</p> <p>18    A. Yes.</p> <p>19    Q. Would an example of</p> <p>20   dilution of racial or ethnic</p> <p>21   minority voting strength include the</p> <p>22   cracking of black voters?</p> <p>23    A. It's a legal term but yes,</p> <p>24   it could. It could as the term is</p> <p>25   used in the case law.</p> | <p style="text-align: right;">Page 189</p> <p>1                   TERRENI</p> <p>2   strength as well, but that would be</p> <p>3   another way of doing it.</p> <p>4       Q. I believe you mentioned</p> <p>5   earlier that racial gerrymandering</p> <p>6   can be demonstrated through direct</p> <p>7   evidence of dilution, is that your</p> <p>8   understanding?</p> <p>9       A. I may have said that, but I</p> <p>10   need to -- I mean the central</p> <p>11   question of racial gerrymandering</p> <p>12   would be whether race was a</p> <p>13   predominant factor in the</p> <p>14   redistricting process and whether or</p> <p>15   not if it was the predominant factor</p> <p>16   in redistricting process whether it</p> <p>17   was the predominant factor in order</p> <p>18   to serve a compelling state</p> <p>19   interest.</p> <p>20    Q. And what do you understand</p> <p>21   to be compelling state interest?</p> <p>22    A. Under some circumstances</p> <p>23   compliance of Section 2 could be a</p> <p>24   compelling state interest.</p> <p>25   Compliance of Section 2 does not</p> |

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| <p style="text-align: right;">Page 190</p> <p>1           TERRENI</p> <p>2   always have to be. I assume you can</p> <p>3   comply with Section 2 without having</p> <p>4   to consider race as the predominant</p> <p>5   factor but it could be.</p> <p>6   Q. What about remedying</p> <p>7   historical discrimination, has that</p> <p>8   been recognized as a compelling</p> <p>9   state interest?</p> <p>10   A. It may have been recognized</p> <p>11   as a compelling state interest but</p> <p>12   in the current redistricting</p> <p>13   framework, as I understand it,</p> <p>14   unless it's expressed through the</p> <p>15   Voting Rights Act it wouldn't in and</p> <p>16   of itself be -- I don't know there</p> <p>17   would be a compelling state interest</p> <p>18   for using race as the predominant</p> <p>19   factor in redistricting. I never</p> <p>20   really had to encounter that.</p> <p>21   Q. If staff was instructed not</p> <p>22   to consider race during</p> <p>23   congressional redistricting, who</p> <p>24   would have made that decision on</p> <p>25   behalf of the Senate?</p> | <p style="text-align: right;">Page 192</p> <p>1           TERRENI</p> <p>2   Chairman Rankin instructed Senate</p> <p>3   staff not to consider race during</p> <p>4   congressional redistricting?</p> <p>5   A. I don't recall him doing</p> <p>6   that.</p> <p>7   Q. Is that something you would</p> <p>8   recall?</p> <p>9   A. Probably.</p> <p>10   Q. Because it's important</p> <p>11   whether or not the Senate could</p> <p>12   consider race or not in drawing</p> <p>13   redistricting lines?</p> <p>14   A. No. It's just because it</p> <p>15   would have been a specific</p> <p>16   instruction from Senator Rankin. I</p> <p>17   mean when you say considering race,</p> <p>18   if you are asking did Senate staff</p> <p>19   look at the racial impact of various</p> <p>20   draws or the racial composition in</p> <p>21   districts under various draws, the</p> <p>22   answer is yes. Was it the</p> <p>23   predominant factor in guiding</p> <p>24   redistrict -- proposed redistricting</p> <p>25   fans, no, and was it a predominant</p>                     |
| <p style="text-align: right;">Page 191</p> <p>1           TERRENI</p> <p>2   MR. GORE: Again, I'm just</p> <p>3   going to object to the extent this</p> <p>4   calls for attorney-client</p> <p>5   communications. And the witness</p> <p>6   can answer to the extent he can do</p> <p>7   so without divulging confidential</p> <p>8   or privileged information.</p> <p>9   A. Well, the question is if</p> <p>10   staff were considered -- were</p> <p>11   instructed not to consider race in</p> <p>12   redistricting who would have</p> <p>13   instructed staff in that fashion, is</p> <p>14   that -- did I restate your question</p> <p>15   fairly?</p> <p>16   Q. Yes.</p> <p>17   A. Well, I don't think anybody</p> <p>18   could have instructed staff in that</p> <p>19   regard better than the chairman or</p> <p>20   the subcommittee and the vote if</p> <p>21   that guidance was given. However,</p> <p>22   if that guidance were given, it</p> <p>23   would have been given by counsel,</p> <p>24   me, Mr. Gore, Mr. Fiffick.</p> <p>25   Q. Are you aware whether</p>                                      | <p style="text-align: right;">Page 193</p> <p>1           TERRENI</p> <p>2   factor for the subcommittee, I don't</p> <p>3   believe it was.</p> <p>4   Q. Who would have made the</p> <p>5   determination of whether or not race</p> <p>6   was the predominant factor in</p> <p>7   redrawing the congressional map?</p> <p>8   A. The courts.</p> <p>9   Q. So that decision, that</p> <p>10   analysis of whether race was the</p> <p>11   predominant factor in the redrawing</p> <p>12   of South Carolina's congressional</p> <p>13   map, that has not been determined</p> <p>14   yet because litigation is ongoing?</p> <p>15   A. I mean that's the way I see</p> <p>16   it. If you are asking whether or</p> <p>17   not we consider race as the</p> <p>18   predominant factor, the answer is</p> <p>19   no.</p> <p>20   Q. Because that's a factual</p> <p>21   question because there hasn't been a</p> <p>22   legal determination yet?</p> <p>23   A. Well, I suppose so. I mean</p> <p>24   obviously we don't think it was.</p> <p>25   You seem to think that it was the</p> |